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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,706	03/09/2004	Johanna Fraki	442-010769-US (D01)	2938
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PERMAN & GREEN 425 POST ROAD FAIRFIELD, CT 06824			ARAQUE JR, GERARDO	
			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/796,706

Applicant(s)

FRAKI ET AL.

Examiner

Gerardo Araque Jr.

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-42 and 44-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-42 and 44-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. **Claims 35 – 36, 38 – 42, 50, and 55** are rejected under 35 U.S.C. 102(a) as being anticipated by **Lovegety**

(<http://www6.cnn.com/WORLD/asiapcf/9806/07/fringe/japan.lovegety/> and

<http://www.geocities.com/Pentagon/Bunker/5921/lovegety.html>).

3. In regards to **claim 36, 50, and 55**, **Lovegety** discloses a first mobile terminal comprising:

circuitry for trading a digital collectable card associated with a user of the first mobile terminal (**wherein the Lovegety devices are capable to trading data information with other Lovegety devices**);

means for detecting whether a second mobile terminal is available for trading the digital collectable card (**wherein the Lovegety device beeps when they detect another Lovegety device within 15 ft.**); and

a short-range wireless communication transceiver for directly communicating with the second mobile terminal for trading the digital collectable card (**wherein the Lovegety device communicates over 15 ft.**);

wherein the means for detecting whether a second mobile terminal is available for trading the digital collectable card further comprises a means for detecting the availability of a particular digital collectable card **(wherein the Lovegety device has different modes programmed to seek out other Lovegety devices transmitting specific data)**.

4. In regard to **claim 35**, **Lovegety** discloses wherein the means of detecting whether the second mobile terminal has a digital collectable card trading capability **(wherein the Lovegety devices are capable to communicating with one another to determine if the user is interested with the user of the other Lovegety device)**.

5. In regards to **claim 38**, **Lovegety** discloses further comprising a means for transferring confirmation and registration messages to a server administering the digital collectable card via a mobile communications network **(wherein the company that makes the Lovegety devices host an Internet site for Lovegety holders to post messages to make matchmaking easier)**.

6. In regard to **claims 39 – 40**, as best understood by the examiner, **Lovegety** discloses a means of determining whether another Lovegety user is within the vicinity. Inherently included, Lovegety uses short-range wireless communication.

7. In regard to **claim 41**, **Lovegety** discloses comprising a means for determining whether another digital collectable card is available **(wherein the Lovegety is capable to communicating with a plurality of other Lovegety devices in order to find a match)**.

8. In regard to **claim 42**, **Lovegety** discloses wherein the first and second mobile terminals are operable to exchange messages proposing a meeting to trade the digital collectable card (**wherein the Lovegety devices flash green or red to determine whether a meeting should be established**).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. **Claims 33 – 34, 37, and 51 – 54** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Lovegety**,

(<http://www6.cnn.com/WORLD/asiapcf/9806/07/fringe/japan.lovegety/> and <http://www.geocities.com/Pentagon/Bunker/5921/lovegety.html>).

11. In regard to **claims 33 – 34 and 51**, **Lovegety** is discussed above, but fail to explicitly disclose using Bluetooth technology.

However, Newton's Telecom dictionary discloses that Bluetooth is, "A wireless protocol that is used to communicate from one device to another in a small area usually less than 30 feet (see also provided definitions of Bluetooth)." As a result, it is obvious for Lovegety to use Bluetooth technology since it operates within the 30 ft. range. Moreover, because a Bluetooth transceiver is being used then it would be operable to communicate within an operational low power radio range.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention that Lovegety to uses a Bluetooth transceiver as a short-range wireless communication transceiver operable to communicate within an operational low power radio range.

12. In regard to **claims 37 and 52**, Newton Telecom dictionary discloses that a means of determining whether the first and second mobile terminals are in the same cell of a mobile communication network is old and well known (see Newton: Cell and CMTS). Moreover, **Lovegety** discloses that the Lovegety devices are capable of communicating to a plurality of Lovegety devices.

13. In regards to **claim 53**, **Lovegety** discloses trading digital information over portable devices within the vicinity of each other. Moreover, although Lovegety does not explicitly disclose the use of a cellular mobile wireless communication network it is old and well known for cellular phones, or even a Blackberry, to carry out the functions described above and further comprising:

a transceiver for cellular mobile wireless communication (**obviously included**);

an input user interface to request digital data from the cellular mobile communication network (**keypad on a cellular phone or a Blackberry**);

a memory to store digital data (**obviously included**);

an output user interface to display the received digital data (**display screen on a cellular phone**); and

a processor configured to transmit user identity information to a digital data server (**phone number**) over the cellular mobile communication network and request

particular data from the digital data server (**such as a Blackberry**), wherein the digital data is adapted to be associated with the user based on the user identity information transmitted over the cellular mobile communication network from the first mobile terminal (**obviously included**).

14. In regards to **claim 54**, it is old and well known to use a password in order to protect a user's identity information.

15. **Claims 44 – 49 and 56 – 62** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Lovegety**

(<http://www6.cnn.com/WORLD/asiapcf/9806/07/fringe/japan.lovegety/> and

<http://www.geocities.com/Pentagon/Bunker/5921/lovegety.html>) in view of **Sehr (US**

Patent 6,325,295 B1)

16. In regards to **claims 44, 45, 57, and 59**, **Lovegety** discloses a method comprising:

trading a digital information associated with a user of a first mobile terminal, including (**wherein the Lovegety devices are capable to trading data information with other Lovegety devices**):

detecting whether a second mobile terminal is available for trading a digital information, including detecting the availability of a particular digital information (**wherein the Lovegety device has different modes programmed to seek out other Lovegety devices transmitting specific data**); and

communicating within an operational range of short range wireless communications directly between the first and second terminals for trading the particular digital data (**wherein the Lovegety device communicates over 15 ft.**).

detecting whether a first mobile terminal is in the vicinity of a second mobile terminal (**wherein the Lovegety devices beep and flash when another Lovegety device is within the vicinity**).

However, **Lovegety** fails to disclose trading digital collectable cards.

Sehr discloses a system and method of trading digital collectable cards over portable terminals with other users (**Col. 2 Lines 41 – 45; Col. 3 Lines 12 – 22, 45 - 48**). Moreover, **Sehr** discloses that certain data elements are certified, such as background information or statistics data, pertaining to a subtopic stored in collector's cards they want to trade with another collector (**Col 3 – 4 Lines 66 – 10; Col. 11 Lines 51 – 54; Col. 15 Lines 27 – 28; Col. 18 Lines 61 – 65**).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify **Lovegety's** teaching of trading digital information over portable devices within the vicinity of each other with **Sehr's** teaching of trading digital collectable cards.

17. In regard to **claim 46**, Newton Telecom dictionary discloses that a means of determining whether the first and second mobile terminals are in the same cell of a mobile communication network is old and well known (see Newton: Cell and CMTS).

18. In regard to **claim 47**, as best understood by the examiner, **Lovegety** discloses a means of determining whether another Lovegety user is within the vicinity. Inherently included, Lovegety uses short-range wireless communication.

19. In regards to **claim 48**, **Lovegety** discloses further comprising a means for transferring confirmation and registration messages to a server administering the digital collectable card via a mobile communications network (**wherein the company that makes the Lovegety devices host an Internet site for Lovegety holders to post messages to make matchmaking easier**). Moreover, **Sehr** also discloses the use of a Service Provider, which would obviously include the user to transfer confirmation and registration messages to a server administering the digital collectable card (**Col. 3 – 4 Lines 66 – 10**).

20. In regard to **claim 49**, **Lovegety** discloses wherein the first and second mobile terminals are operable to exchange messages proposing a meeting to trade the digital collectable card (**wherein the Lovegety devices flash green or red to determine whether a meeting should be established**). Moreover, **Sehr** discloses that the collectors can also trade the cards at their leisure (**Col. 18 Lines 61 – 65**).

21. In regards to **claim 56**, **Lovegety** is discussed above and further discloses the use of an Internet site for communication amongst users. However, **Lovegety** fails to disclose where the communication transceiver is arranged to communicate a registration message of the trade to a network entity.

Sehr discloses a similar system where users are able to trade information using portable collector card devices as well as other devices, such as computers. **Sehr**

further discloses that the devices are connected to the Service Provider, which is configured to receive information regarding any transactions that are processed. As a result, the Service Provider is able to authenticate the collectable data or the cardholder information (**Col. 3 Lines 55 – 65**).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify **Lovegety** in view of the teachings of **Sehr** to include a network entity, such as the Service Provider disclosed in **Sehr**, as a means of authenticating the data traded amongst users.

22. In regards to **claim 58, 60, and 61**, **Sehr** discloses communicating a registration message of the trade to a network entity (**Col. 3 Lines 55 – 65**).

23. In regards to **claim 62**, **Lovegety** discloses a first mobile terminal comprising:
circuitry for trading a digital collectable card associated with a user of the first mobile terminal (**wherein the Lovegety devices are capable to trading data information with other Lovegety devices**);

means for detecting whether a second mobile terminal is available for trading the digital collectable card (**wherein the Lovegety device beeps when they detect another Lovegety device within 15 ft.**); and

a short-range wireless communication transceiver for directly communicating with the second mobile terminal for trading the digital collectable card (**wherein the Lovegety device communicates over 15 ft.**),

wherein the means for detecting whether a second mobile terminal is available for trading the digital collectable card further comprises a means for detecting the

availability of a particular digital collectable card (**wherein the Lovegety device has different modes programmed to seek out other Lovegety devices transmitting specific data**).

Lovegety discloses the use of an Internet site for communication amongst users. However, **Lovegety** fails to disclose where the communication transceiver is arranged to communicate a registration message of the trade to a network entity.

Sehr discloses a similar system where users are able to trade information using portable collector card devices as well as other devices, such as computers. **Sehr** further discloses that the devices are connected to the Service Provider, which is configured to receive information regarding any transactions that are processed. As a result, the Service Provider is able to authenticate the collectable data or the cardholder information (**Col. 3 Lines 55 – 65**).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify **Lovegety** in view of the teachings of **Sehr** to include a network entity, such as the Service Provider disclosed in **Sehr**, as a means of authenticating the data traded amongst users.

Response to Arguments

24. Applicant's arguments with respect to claim 9/11/2007 have been considered but are moot in view of the new ground(s) of rejection.

Arguments made in points 2.1 – 2.2.3, 4 – 4.2, and newly added claims

Point 2.1 - 2.2.3

25. In response to applicant's argument that Lovegety has not disclosure related to circuitry for trading a digital collectable card, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

As stated before, Lovegety discloses handheld communication devices capable detecting whether another Lovegety is available, detecting when another Lovegety is in range and transmitting data between at least 2 communication devices (**see provided NPL's, specifically Page 1 ¶ 6 – 8 of CNN and Page 1 ¶ 8 of The Dragon's Roar**).

Point 4 – 4.2

26. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

KSR forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. See the recent Board decision *Ex parte Smith*, --USPQ2d--, slip op. at 20, (Db. Pat. App. & Interf. June 25, 2007)(citing KSR, 82 USPQ2d at 1396)(available at <http://www.uspto.gov/web/offices/dcom/bpai/prec/fd071925.pdf>).

Further still, the applicant argues that Sehr mentions that cards may be traded between collectors, but there is no mention of any method of trading cards (**Page 13 ¶ 2**). The Examiner is uncertain of what the applicant is trying to convey. The Examiner asserts that there Sehr does, indeed, disclose a method of trading cards, as discussed above, and appears to admit that Sehr does, indeed, disclose a method of trading cards. Further still, the Examiner also asserts that one of ordinary skill in the art would have been aware that there are a variety of methods of trading cards and that each method is appropriate for a specific situation.

Points 5 – 7

27. Regarding the newly added claims, the Examiner has addressed them in the Office Action above.

Conclusion

28. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerardo Araque Jr. whose telephone number is (571)272-3747. The examiner can normally be reached on Monday - Friday 8:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GA
10/29/07



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